

STATE'S EX PARTE MOTION TO SEAL WARRANT

The court has common-law authority to seal a search warrant, along with its affidavit, return, and inventory, when the investigation is ongoing and the Grand Jury is still investigating the subjects of the search warrant. In addition, sealing the search warrant will protect confidential informants and the privacy interests of innocent people.

The State of Arizona, hereby requests this Honorable Court to seal the above entitled search warrant, affidavit, return, and inventory, because such action is necessary to protect an on-going criminal investigation and/or to aid in the apprehension and arrest of outstanding suspects involved in this investigation.

MEMORANDUM OF POINTS AND AUTHORITIES

On August 24, 2000, an affidavit for a search warrant was filed for the seizure of various items located at 19--- N. 26th Street, Phoenix, Maricopa County, Arizona, which constitute evidence of criminal offenses as follows: manufacturing methamphetamine and the possession of equipment and chemicals to manufacture methamphetamine, in violation of A.R.S. § 13-3407. Based upon the affidavit, the court issued a search warrant, which was executed on August 24, 2000.

A.R.S. § 13-3918(A) states that when the return is filed, the affidavit and records shall be open to the public as a judicial record. The Honorable Ronald S. Reinstein, while serving as the Criminal Presiding Judge for Maricopa County, has issued orders with respect to the policies and practices regarding returned search warrants in Maricopa County. In the order, Judge Reinstein ruled that warrants and affidavits are presumptively unsealed upon the return pursuant to A.R.S. § 13-3918(A), but that warrants and affidavits may remain sealed if the court issuing the warrant is shown good cause why the documents should remain sealed.

This Court has common-law authority to place limitations on open disclosure of public documents. These limitations are based on the conflict between the public's right to openness in government and important public policy considerations relating to the protection of privacy of persons or a concern about disclosure detrimental to the best interests of the State. *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984). The State has a legitimate interest in protecting ongoing investigations from premature discovery. *Phoenix Newspapers, Inc. v. Superior Court*, 140 Ariz. 30, 680 P.2d 166 (App. 1984).

In *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989), the Ninth Circuit determined that there was no First Amendment or historical common law restriction on sealing search warrants and affidavits.

A.R.S. § 13-3918 sets forth a specific procedure that is similar to 41(G) of the Federal Rules of Criminal Procedure. The Ninth Circuit has held that 41(G) was not intended to expand First Amendment or common-law rights. Rather, the rule was intended to ensure that warrant materials were maintained in an efficient and orderly manner. *Times Mirror Company v. United States* at 1219.

Additional state courts have held that the common law allowed the court to seal search warrant documents where there was a finding that disclosure would create a substantial threat to the interests of effective law enforcement, or individual privacy and safety. *Seattle Times Co. v. Eberharter*, 105 Wash.2d 144, 713 P.2d 710 (Wash. 1986).

The Maricopa County Grand Jury is investigating the activities and persons described in the search warrant affidavit. Information gathered in this search will be presented to the Maricopa County Grand Jury. The affidavit in support of this warrant details the investigation of the targets. Various aspects of this investigation are continuing in order to identify additional members of this organization and its operation. If the affidavit is unsealed at the time of the return, it will jeopardize the successful completion of the investigation.

Premature disclosure of the affidavit may also endanger undercover officers involved in this investigation. The undercover officers are concerned about their safety should their identity be suspected or revealed prematurely.

For these reasons, which amply demonstrate good cause, the State respectfully requests that the affidavit, with all attachments, and search warrant, with a case number of CR xxxxxx, be sealed and remain sealed pending completion of the Maricopa County Grand Jury investigation.